

Hon. Ronald B. Leighton

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

IN RE BMT-NW ACQUISITION
LITIGATION

CONSOLIDATED CIVIL ACTION
NO. 3:12-cv-5332-RBL

ORDER GRANTING WALKER
SPECIALTY CONSTRUCTION,
INC. LEAVE TO AMEND
COMPLAINT

THIS MATTER is before the Court on Plaintiff Walker Specialty Construction, Inc.'s ("Walker") Motion for Leave to Amend Complaint. (Dkt. # 33.) Walker's Motion for Leave to Amend Complaint is granted.

I. BACKGROUND

Walker and Hamer Electric, Inc. ("Hamer") independently filed lawsuits against the above-referenced defendants ("Defendants")¹ asserting claims related to the asset foreclosure of TMB-NW Liquidation, LLC (the "Foreclosure"), including claims

¹ Walker and Hamer each filed lawsuits against Charles and Ann Travelstead, TMB-NW Liquidation, LLC, and BMT-NW Acquisition, LLC. Hamer also named BMT Acquisition, LLC in its lawsuit, but Walker did not. For purposes of clarity, all defendants are referred to herein as "Defendants."

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under the Uniform Fraudulent Transfer Act and the theory of successor liability.² (Dkt. # 34 at p.1-2, ¶¶ 2 – 6, Exh. A and B.) The complaint filed by Hamer expressly stated a cause of action for “veil piercing” against Charles W. Travelstead and Ann Travelstead. (Dkt. # 34 at p.3, ¶ 8 and Exh. A.) The complaint filed by Walker did not expressly include the phrase “piercing the veil.” (Dkt. # 34 at p.3, ¶ 9 and Exh. B.) By stipulation of the parties and order of this Court, the lawsuits were consolidated into the present action. (Dkt. # 28 and Dkt. # 29.)

II. DISCUSSION

Walker requests leave to amend its complaint to clarify its piercing the veil claim. The district court has discretion to grant or deny leave to amend, and “[t]he court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). In determining whether to grant leave, courts consider five factors: “bad faith, undue delay, prejudice to the opposing party, futility of amendment, and whether the plaintiff previously amended the complaint.” *United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011). Among these factors, prejudice to the opposing party carries the greatest weight. *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).

Walker has not exhibited bad faith or undue delay. Defendants are not at risk of prejudice because they have been on notice of the piercing the veil claim throughout the litigation. Walker has not previously amended its complaint, and the Court cannot say that amendment would be futile.

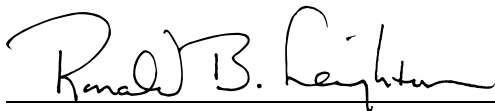
² The Hamer action was filed on March 30, 2012 in Grays Harbor County Superior Court, Washington, and was then removed to this Court. See *Hamer Electric, Inc. v. TMB-NW Liquidation, LLC et al.*, Case No. 3:12-cv-05332-RBL (W.D. Wash. removal filed April 18, 2012). Similarly, the Walker action was filed on April 27, 2012 in Grays Harbor County Superior Court, Washington, and was then removed to this Court. See *Walker Specialty Construction, Inc. v. BMT-NW Acquisition, LLC, et al.*, Case No. 3:12-cv-05386-RBL (W.D. Wash. removal filed May 1, 2012).

III. ORDER

Walker's Motion for Leave to Amend Complaint is **GRANTED**. Walker has **30 days** from the date below to file an amended complaint in the form proposed in its Motion.

IT IS SO ORDERED.

Dated this 11th day of December, 2013.



RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE

Presented by:

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